

27.409 Solicitation provisions and contract clauses.

(a) Generally, a contract should contain only one data rights clause. However, where more than one is needed, the contract should distinguish the portion of contract performance to which each pertains.

(b)

(1) Insert the clause at [52.227-14](#), Rights in Data-General, in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is-

(i) For the production of special works of the type set forth in [27.405-1](#), although in these cases insert the clause at [52.227-14](#), Rights in Data-General, and make it applicable to data other than special works, as appropriate (see paragraph (e) of this section);

(ii) For the acquisition of existing data, commercial computer software, or other existing data, as described in [27.405-2](#) through [27.405-4](#) (see paragraphs (f) and (g) of this section);

(iii) A small business innovation research contract (see paragraph (h) of this section);

(iv) To be performed outside the United States (see paragraph (i)(1) of this section);

(v) For architect-engineer services or construction work (see paragraph (i)(2) of this section);

(vi) For the management, operation, design, or construction of a Government-owned facility to perform research, development, or production work (see paragraph (i)(3) of this section); or

(vii) A contract involving cosponsored research and development in which a clause providing for less than unlimited right has been authorized (see [27.408](#)).

(2) If an agency determines, in accordance with [27.404-2\(b\)](#), to adopt the alternate definition of "Limited Rights Data" in paragraph (a) of the clause, use the clause with its Alternate I.

(3) If a contracting officer determines, in accordance with [27.404-2\(c\)](#) that it is necessary to obtain limited rights data, use the clause with its Alternate II. The contracting officer shall complete paragraph (g)(3) to include the purposes, if any, for which limited rights data are to be disclosed outside the Government.

(4) In accordance with [27.404-2\(d\)](#), if a contracting officer determines it is necessary to obtain restricted computer software, use the clause with its Alternate III. Any greater or lesser rights regarding the use, reproduction, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of paragraph (g)(4) of the clause shall be specified in the contract and the notice modified accordingly.

(5) Use the clause with its Alternate IV in contracts for basic or applied research (other than those for the management or operation of Government facilities, and contracts and subcontracts in support of programs being conducted at those facilities or where international agreements require otherwise) to be performed solely by universities and colleges. The clause may be used with its Alternate IV in other contracts if in accordance with [27.404-3\(a\)](#), an agency determines to grant permission for the contractor to assert claim to copyright subsisting in all data first produced without further request being made by the contractor. When Alternate IV is used, the contract may exclude items or categories of data

from the permission granted, either by express provisions in the contract or by the addition of a paragraph (d)(4) to the clause (see [27.404-4](#)).

(6) In accordance with [27.404-6](#), if the Government needs the right to inspect certain data at a contractor's facility, use the clause with its Alternate V.

(c) In accordance with [27.404-2\(c\)\(2\)](#) and [27.404-2\(d\)\(5\)](#), if the contracting officer desires to have an offeror state in response to a solicitation whether limited rights data or restricted computer software are likely to be used in meeting the data delivery requirements set forth in the solicitation, insert the provision at [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software, in any solicitation containing the clause at [52.227-14](#), Rights in Data-General. The contractor's response may provide an aid in determining whether the clause should be used with Alternate II and/or Alternate III.

(d) Insert the clause at [52.227-16](#), Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract (see [27.406-2](#)). This clause may also be used in other contracts when considered appropriate. For example, if the contract is for basic or applied research to be performed by a university or college, and the contracting officer believes the contract effort will in the future exceed \$500,000, even though the initial award does not, the contracting officer may include the clause in the initial award.

(e) In accordance with [27.405-1](#), insert the clause at [52.227-17](#), Rights in Data-Special Works, in solicitations and contracts primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples of such contracts are set forth in [27.405-1](#).

(1) Insert the clause if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(2) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced by the contractor for other than contract performance.

(3) Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired.

(4) The clause may be modified in accordance with paragraphs (c) through (e) of [27.405-1](#).

(f) Insert the clause at [52.227-18](#), Rights in Data-Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in [27.405-2](#). The contract may set forth limitations consistent with the purposes for which the work is being acquired. While no specific clause of this subpart is required to be included in contracts solely for the acquisition, without disclosure prohibitions, of books, publications, and similar items in the exact form in which the items exist prior to the request for purchase (*i.e.*, the off-the-shelf purchase of such items), or in other contracts where only existing data available without disclosure prohibitions is to be furnished, if reproduction rights are to be acquired, the contract shall include terms addressing such rights. (See [27.405-4](#).)

(g) In accordance with [27.405-3](#), when contracting (other than from GSA's Multiple Award Schedule contracts) for the acquisition of commercial computer software, the contracting officer may insert the clause at [52.227-19](#), Commercial Computer Software License, in the solicitation and contract. In any event, the contracting officer shall assure that the contract contains terms to obtain sufficient

rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with [27.405-3](#).

(h) If the contract is a Small Business Innovation Research (SBIR) contract, insert the clause at [52.227-20](#), Rights in Data-SBIR Program in all Phase I, Phase II, and Phase III contracts awarded under the Small Business Innovation Research Program established pursuant to [15 U. S.C. 638](#). The SBIR protection period may be extended in accordance with the Small Business Administration's "Small Business Innovation Research Program Policy Directive" (September 24, 2002).

(i) Agencies may prescribe in their procedures, as appropriate, a clause consistent with the policy of [27.402](#) in contracts-

(1) To be performed outside the United States;

(2) For architect-engineer services and construction work (*e.g.*, the clause at [52.227-17](#), Rights in Data-Special Works); or

(3) For management, operation, design, or construction of Government-owned research, development, or production facilities, and in contracts and subcontracts in support of programs being conducted at such facilities.

(j) In accordance with [27.406-3\(a\)](#), insert the clause at [52.227-21](#), Technical Data Declaration, Revision, and Withholding of Payment-Major Systems, in contracts for major systems acquisitions or for support of major systems acquisitions. This requirement includes contracts for detailed design, development, or production of a major system and contracts for any individual part, component, subassembly, assembly, or subsystem integral to the major system, and other property that may be replaced during the service life of the system, including spare parts. When used, this clause requires that the technical data to which it applies be specified in the contract (see [27.406-3\(a\)](#)).

(k) In accordance with [27.406-3\(b\)](#), in the case of civilian agencies other than NASA and the U.S. Coast Guard, insert the clause at [52.227-22](#), Major System-Minimum Rights, in contracts for major systems or contracts in support of major systems.

(l) In accordance with [27.407](#), if a contracting officer desires to acquire unlimited rights in technical data contained in a successful proposal upon which a contract award is based, insert the clause at [52.227-23](#), Rights to Proposal Data (Technical). Rights to technical data in a proposal are not acquired by mere incorporation by reference of the proposal in the contract, and if a proposal is incorporated by reference, the contracting officer shall follow [27.404](#) to assure that the rights are appropriately addressed.

Parent topic: [Subpart 27.4 - Rights in Data and Copyrights](#)